

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Bucher offered the following:

**Amendment (with title amendment)**

Remove lines 1139-1212, and insert:

Section 28. Subsection (5) of section 766.202, Florida Statutes, is amended to read:

766.202 Definitions; ss. 766.201-766.212.--As used in ss. 766.201-766.212, the term:

(5) "Medical expert" means a person familiar with the evaluation, diagnosis, or treatment of the medical condition at issue who:

(a) Is duly and regularly engaged in the practice of his or her profession, ~~who~~ holds a health care professional degree from a university or college, and has had special professional training and experience; or

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26        (b) Has ~~one possessed~~ of special health care knowledge or  
27        skill about the subject upon which he or she is called to  
28        testify or provide an opinion.

29  
30        Such expert shall certify that he or she has similar credentials  
31        and expertise in the area of the defendant's particular practice  
32        or specialty, if the defendant is a specialist.

33        Section 29. Subsection (2) of section 766.203, Florida  
34        Statutes, is amended to read:

35        766.203 Presuit investigation of medical negligence claims  
36        and defenses by prospective parties.--

37        (2) Prior to issuing notification of intent to initiate  
38        medical malpractice litigation pursuant to s. 766.106, the  
39        claimant shall conduct an investigation to ascertain that there  
40        are reasonable grounds to believe that:

41        (a) Any named defendant in the litigation was negligent in  
42        the care or treatment of the claimant; and

43        (b) Such negligence resulted in injury to the claimant.

44  
45        Corroboration of reasonable grounds to initiate medical  
46        negligence litigation shall be provided by the claimant's  
47        submission of a verified written medical expert opinion from a  
48        medical expert as defined in s. 766.202(5), at the time the  
49        notice of intent to initiate litigation is mailed, which  
50        statement shall corroborate reasonable grounds to support the  
51        claim of medical negligence. This opinion and statement are  
52        subject to discovery and are admissible in future proceedings,  
53        subject to exclusion under s. 90.403.

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54 Section 30. Subsections (2) and (3) and paragraph (b) of  
55 subsection (7) of section 766.207, Florida Statutes, are amended  
56 to read:

57 766.207 Voluntary binding arbitration of medical  
58 negligence claims.--

59 (2) Upon the completion of presuit investigation with  
60 preliminary reasonable grounds for a medical negligence claim  
61 intact, the parties may elect to have damages determined by an  
62 arbitration panel. Such election may be initiated by either  
63 party by serving a request for voluntary binding arbitration of  
64 damages within 150 ~~90~~ days after service of the claimant's  
65 notice of intent to initiate litigation upon the defendant. The  
66 evidentiary standards for voluntary binding arbitration of  
67 medical negligence claims shall be as provided in ss.

68 120.569(2)(g) and 120.57(1)(c).

69 (3) Upon receipt of a party's request for such  
70 arbitration, the opposing party may accept the offer of  
71 voluntary binding arbitration within 30 days. However, in no  
72 event shall the defendant be required to respond to the request  
73 for arbitration sooner than 150 ~~90~~ days after service of the  
74 notice of intent to initiate litigation under s. 766.106. Such  
75 acceptance within the time period provided by this subsection  
76 shall be a binding commitment to comply with the decision of the  
77 arbitration panel. The liability of any insurer shall be subject  
78 to any applicable insurance policy limits.

79 (7) Arbitration pursuant to this section shall preclude  
80 recourse to any other remedy by the claimant against any  
81 participating defendant, and shall be undertaken with the  
82 understanding that:

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83 (b) ~~Noneconomic damages shall be limited to a maximum of~~  
84 ~~\$250,000 per incident, and shall be calculated on a percentage~~  
85 ~~basis with respect to capacity to enjoy life, so that a finding~~  
86 ~~that the claimant's injuries resulted in a 50 percent reduction~~  
87 ~~in his or her capacity to enjoy life would warrant an award of~~  
88 ~~not more than \$125,000 noneconomic damages.~~

89  
90 The provisions of this subsection shall not preclude settlement  
91 at any time by mutual agreement of the parties.

92 Section 31. Paragraph (a) of subsection (4) of section  
93 766.209, Florida Statutes, is amended to read:

94 766.209 Effects of failure to offer or accept voluntary  
95 binding arbitration.--

96 (4) If the claimant rejects a defendant's offer to enter  
97 voluntary binding arbitration:

98 (a) The damages awardable at trial shall be limited to net  
99 economic damages, plus noneconomic damages ~~not to exceed~~  
100 ~~\$350,000 per incident. The Legislature expressly finds that such~~  
101 ~~conditional limit on noneconomic damages is warranted by the~~  
102 ~~claimant's refusal to accept arbitration, and represents an~~  
103 ~~appropriate balance between the interests of all patients who~~  
104 ~~ultimately pay for medical negligence losses and the interests~~  
105 ~~of those patients who are injured as a result of medical~~  
106 ~~negligence.~~

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108 ===== T I T L E A M E N D M E N T =====

109 Remove line(s) 75-84, and insert:  
110 judgment; establishing assessments by the court; amending s.  
111 766.202, F.S.; providing requirements for medical experts;

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112 amending s. 766.203, F.S.; providing for discovery and  
113 admissibility of opinions and statements tendered during presuit  
114 investigation; amending s. 766.207, F.S.; conforming provisions  
115 to the extension in the time period for presuit investigation;  
116 removing a limitation on noneconomic damages; amending s.  
117 766.209, F.S.; removing a limitation on noneconomic damages;  
118 requiring the Department of Health to study